



Association for Local Telecommunications Services

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RICHARD J. METZGER
VICE PRESIDENT &
GENERAL COUNSEL

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AUG 21 1998

August 21, 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, DC 20554

The Honorable Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC 20554

The Honorable Michael K. Powell
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

The Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, DC 20554

The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, DC 20554

Re: CC Docket No. 96-115 -- Telecommunications Carriers' Use of Customer
Proprietary Network Information (CPNI); Ex Parte

Dear FCC Chairman and Commissioners:

I am writing you to support the attached request of PCIA, USTA, CTIA, CompTel, OPASTCO, NRTA, Small Business in Telecommunications, ITTA, ACTA, and NTCA seeking interim relief from the mechanized safeguard requirements adopted in the Second Report and Order in the above proceeding.

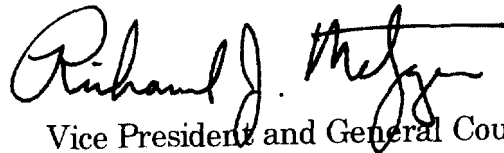
As explained in the request, the underlying NPRM provided inadequate notice of the possibility of such requirements, and the resulting Order severely

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FCC Chairman and Commissioners
August 21, 1998
Page 2

underestimated the associated costs. Accordingly, ALTS respectfully asks that the Commission grant the request.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard J. Metzger". The signature is fluid and cursive, with a long horizontal line extending from the end.

Vice President and General Counsel

cc: A. Fitzgerald
D. Siddall
P. Misener
P. Tenhula
K. Gulick
D. Phythyon
K. Brown
T. Power
J. Casserly
K. Martin
K. Dixon
P. Gallant
B. Olson



July 20, 1998

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, DC 20554

The Honorable Susan Ness
Commissioner
Federal Communications Commission
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Re: CC Docket No. 96-115 -- Telecommunications Carriers' Use of Customer
Proprietary Network Information (CPNI); *Ex Parte*

FEDERAL COMMUNICATIONS
COMMISSION
JUL 20 1998

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Dear FCC Chairman and Commissioners:

We are writing to you jointly to emphasize our common concern with the mechanized safeguard requirements adopted in the *Second Report and Order* in the above-referenced proceeding and to urge prompt interim relief from those requirements. Specifically, we are asking the Commission, on its own motion, to stay those requirements pending the Commission's review of them on reconsideration.

Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket Nos. 96-115, 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 93-27 (rel. Feb. 26, 1998) ("Second Report and Order" or "Order").

In the *Second Report and Order*, the Commission adopted rules pursuant to Section 222 of the Act to govern all carriers' use of customer proprietary network information (CPNI). The Commission also adopted a panoply of safeguards to foster carrier compliance with those rules, including training mandates, supervisory review processes, and officer-level compliance certification requirements.

The Commission imposed two systems-based mechanized safeguards. First, all telecommunications carriers are required to develop and implement software systems that "flag" customer records to indicate whether the customer has approved of the marketing use of his or her CPNI. This "flag" must be conspicuously displayed within the first few lines of the first computer screen of a customer's record. Second, all carriers are obligated to develop and implement an "electronic audit" mechanism that tracks access to customer accounts and that is capable of recording whenever records are opened, by whom, and for what purpose. Carriers are further required to retain all of this tracking data for a full year. Both of these requirements will become enforceable on January 26, 1999.

Numerous carriers, large and small, from across all industry segments, including individual members of the undersigned associations and many of the associations themselves, as well as IXCs, have filed petitions for reconsideration or other relief from these electronic safeguard requirements. The reasons presented in support of reconsideration can be boiled down to their essentials. First, the underlying NPRM provided inadequate notice of the possibility of such requirements; as a corollary, the record is insufficient to sustain the requirement. Second, the Commission's *Order* severely underestimated the costs and complexities of implementing the requirements.² Carriers' estimates of implementation costs have ranged from *hundreds of millions* of dollars for larger carriers (AT&T, MCI) to proportionately burdensome tens of thousands of dollars for smaller carriers (NTCA). Several parties have also expressed grave concerns over the drain such IT-intensive projects could impose on Y2K and other mandated efforts. Third, the *Order* overestimates the benefits to be derived from the requirements adopted. In particular, contrary to the Commission's stated expectations, the electronic audit requirement has been shown not to be a reliable means of determining whether CPNI has been used properly. In short, the various petitions and supporting comments compellingly demonstrate that the electronic safeguard requirements of the *Second Report and Order* do not survive a cost/benefit analysis and should be eliminated.

² In fact, in addressing the costs and complexities of implementing the requirements, the Commission merely states in the *Order* "...that these requirements are not unduly burdensome. All carriers must expend some resources to protect certain information of their customers." See *Order* at ¶194. Moreover, the Commission had a statutory duty pursuant to the Regulatory Flexibility Act, as amended, to not only rely on the alleged capabilities of large carriers, but to also analyze the economic impact of these provisions on all small entities, to provide small entities with sufficient notice and opportunity to comment on the costs, recordkeeping, and reporting requirements, and to detail the burdens that the mechanized safeguards will impose. The Commission did not fulfill these requirements. See Office of Advocacy, U.S. Small Business Administration, *Ex Parte Comments*, at 3 (July 15, 1998).

Yet, our present purpose is not to pursue that result on its merits. Instead, our instant objective is to bring to the Commission's attention, and to seek prompt relief from, the immediate burdens imposed by these requirements.

In order to be compliant by the January 26, 1999 deadline, carriers must begin expending monetary and other resources *now*. As indicated above, the necessary monetary commitments are substantial, and the availability of IT expertise is constrained by other projects of at least equal importance. Yet, if the Commission ultimately eliminates these requirements, as the record on reconsideration clearly shows the Commission should, the commitment of resources to these requirements will be rendered unnecessary. We therefore implore the Commission to stay its electronic safeguard requirements pending reconsideration in order to avoid such likely economic waste.


Grant of an interim stay will not harm any party. But for one lone carrier who dissented only with respect to the flagging requirement, the respective petitions garnered no opposition in subsequent pleading cycles. And, even that carrier would not be harmed by the requested stay insofar as that carrier, too, would be relieved of the requirements' burdens. Further, consumers' interests would continue to be protected through the substantive CPNI rules adopted in the *Order* and the existing notification, training, supervisory review, and compliance certification requirements. Conversely, carriers who expend significant resources to implement requirements that are not likely to produce the intended benefits and for which a real possibility of elimination or modification exists will have no means to recover these expenditures and will be harmed irreparably. The public interest demands avoidance of such unnecessary economic waste.³

For these reasons, we collectively and respectfully ask the Commission to move swiftly to issue an interim stay of the electronic safeguard requirements of the *Second Report and Order*, pending further consideration of those requirements on their merits.

Sincerely,

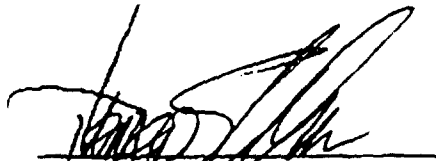

Jay Kitchen

President
Personal Communications Industry Association
(PCIA)


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President & CEO
United States Telephone Association
(USTA)

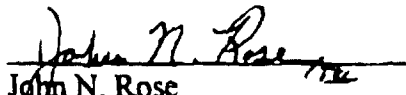
³ Even if the Commission ultimately does *not* modify or eliminate its requirements on reconsideration, a stay is appropriate now to avoid the *possibility* of substantial economic waste. *Rules and Policies Regarding Calling Number Identification Services -- Caller ID*, 10 FCC Rcd 13819 (1995).



Thomas E. Wheeler
President/CEO
Cellular Telecommunications Industry Association
(CTIA)



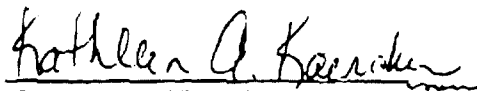
Russell Frisby
President & CEO
Competitive Telecommunications Association
(CompTel)



John N. Rose
President
Organization for the Protection and Advancement
of Small Telephone Companies (OPASTCO)



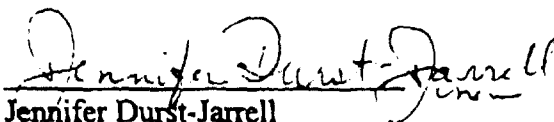
John S. O'Neill
General Counsel
National Rural Telecommunications Association
(NRTA)



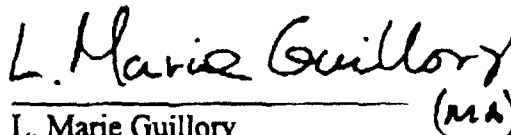
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L. Marie Guillory (MA)
Regulatory Counsel
National Telephone Cooperative Association
(NTCA)

cc: Mr. Ari Fitzgerald, Legal Advisor, Office of the Chairman
Mr. David Siddall, Legal Advisor, Office of Commissioner Ness
Mr. Paul Misener, Senior Legal Advisor/Chief of Staff,
Office of Commissioner Furchgott-Roth
Mr. Peter Tenhula, Office of Commissioner Powell
Ms. Karen Gulick, Legal Advisor, Office of Commissioner Tristani
Mr. Dan Phythyon, Chief, Wireless Telecommunications Bureau
Ms. Kathryn C. Brown, Chief, Common Carrier Bureau

Mr. Thomas Power, Legal Advisor, Office of the Chairman
Mr. James Casserly, Senior Legal Advisor, Office of Commissioner Ness
Mr. Kevin Martin, Legal Advisor, Office of Commissioner Furchtgott-Roth
Mr. Kyle Dixon, Legal Advisor, Office of Commissioner Powell
Mr. Paul Gallant, Legal Advisor, Office of Commissioner Tristani